

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, March 10, 2014, 6:00 PM

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Guy Gentry, President; Jeff Valiant, Vice-President; Bill Byers; Amanda Mosiman; Brad Overton and Jeff Willis.

Also present were Morrie Doll, Attorney; Sherri Rector, Executive Director and Molly MacGregor, Staff.

MEMBERS ABSENT: Richard Reid

Roll call was taken and a quorum declared present.

MINUTES: Upon a motion by Jeff Valiant and seconded by Amanda Mosiman, the Minutes of the last regular meeting held February 10, 2014, were approved as circulated.

The President explained the Rules of Procedure to the petitioners.

SUBDIVISION FOR PRIMARY PLAT APPROVAL:

PP-14-02 –Willow Estates Subdivision, Blue Heron Development, by Alan Bosma , Partner.
Owner: Herbert P Grimm. 7.8296 acres located on the E side of Grimm Rd. 0' N of the intersection formed by Grimm Rd. and Willow Pond Rd. Ohio Twp. Complete legal on file.
Advertised in The Standard February 27, 2014.

Bill Bivins and Alan Bosma were present.

The President called for a staff report.

Mrs. Rector stated Mr. Bivins mailed out the notices 10 days prior to the meeting like we used to, not the 21 days as they are required to do now. She said however we have received all of the green return receipt cards except for one from Mr. Faheed. She stated Mr. Bivins spoke with Dr. Faheed to get him to sign a waiver; he said he didn't want to and would be at tonight's meeting. Mrs. Rector said our rules are to get the addresses from the Auditor's office. She said he did that and mailed them to the correct addresses as the Auditor's office have it. She said Mr. Bivins also went to Mr. Faheed's house and it turns out that they no longer live there; they sold it back in October so it would not have gotten to them anyway because they did not change the records in the Auditor's office.

Attorney Doll asked if the home is on the adjacent property.

Mrs. Rector said no, this is where you'd send the taxes to.

The President stated the main purpose of the change from 10 to 21 days was to allow more time to get the notices back, not to give additional notification and he was notified.

Mrs. Rector stated he was notified today. She said the Board will have to make a decision if the notice requirement has been met. Mrs. Rector added that additional letters were sent out to adjacent property owners because after the 21 day notices went out, the Commissioners realized they had to go to Road School this afternoon so they changed their meeting to this morning at 10 instead of what was sent out in the notices to everyone. She said so we sent out letters notifying them that the Drainage Board meeting and the Commissioners meeting on streets and drainage would be changed to 2:30 and 4:00 on March the 24th. She said that letter went straight mail and it would have gone to that house but they wouldn't have gotten that either because it's the wrong address in the Auditor's office. She said this plat, because it is at no fault of theirs that the Commissioners did not think about this meeting, would have to be conditioned upon receiving approval from the Commissioners on street and drainage plans on March 24, 2014. Mrs. Rector said the zoning is R-1A which requires lots of at least 6,000 square feet and a minimum width at the building line of 60 feet. She said there is no flood plain and this is a proposed 21 lot residential subdivision. She said they are also asking for a waiver, as we now have in our subdivision ordinance, that they would not be required to put in sidewalks. She said that is another action the Board will need to take. Mrs. Rector said another developer at another engineering company had submitted a plat on this property; they turned around and are selling it to Mr. Bosma now. She said so we do have a letter from Newburgh Sewer on the first one that was filed, same place, same number of lots, which states they have the capacity to serve the subdivision. She added Mr. Bivins went today to get a letter for them and the girl was out sick, but we do have a letter stating they have the capacity. She said we have a letter from Chandler utilities stating they have sufficient flow and pressure to service the proposed subdivision. Mrs. Rector stated other than that, the plat is in order.

Attorney Doll stated he was looking at the rules and procedure under subdivision plats, rule 5, subsection 3.1, subsection B which requires a petitioner shall send by certified mail with return receipt requested to all abutting property owners at least 21 days before the hearing date. He said so he thinks they have a problem maybe in two ways. Attorney Doll said he understands he requires them to use the Auditors mailing list; he is more troubled about the fact that none of them went out 21 days before the hearing and he doesn't know how they get around that problem.

Mrs. Rector stated they are post marked February 20th, so she was wrong in saying 10 days, it was more like 18 days so he almost had it.

Attorney Doll stated if the gentleman was here we could verify with his statement at the microphone that he was waving the mailing. Attorney Doll asked Bill Bivins if Dr. Faheed would do it today.

Bill Bivins stated no, Dr. Faheeds' concern was the property to the east is owned by Bert and Bob Grimm and he was concerned that they would request access through his property to Grimm Road and he wanted them to give him 25 feet and them 25 feet. He said he met with Mr. Grimm this morning and he has access to Willow Pond Road to the south so that is not an issue any more.

Attorney Doll asked if he knew that.

Bill Bivins stated yes, he does know that because he gave him a letter this morning after he had talked to Mr. Grimm. He said he told him the 2:30 and the 3:30 meetings were not going to happen today but the 6:00 meeting would be happening.

Attorney Doll said the only problem is that the rules are clear. He said it requires us to give advance notice, as the State Statutes do in title 36, and it says by definition that adequate notice is provided under these rules if the petitioner shall send by certified mail at least 21 days before the hearing date. He said he is afraid that if a remonstrator should challenge this then we would lose in court.

The President asked if the plat would have to wait until the 24th to be approved.

Mrs. Rector said yes.

Bill Bivins stated he received a call today from his engineer wanting to know if they'd be interested in combining the two properties and make one big subdivision. Mr. Bivins said this was after he gave notice that the road would not have to go through there.

Mrs. Rector stated her question is where should they send the notice if they do not have record of where he lives.

Attorney Doll stated he understood that. He said he doesn't have a problem with where it was mailed to, he finds fault when it was mailed. He stated had it been mailed 21 days before the meeting to the correct address on file in the Auditor's office, then he would be telling them to go ahead with the plat. He stated he has more problem with the lack of 21 day notice than the wrong address. He said that is Dr. Faheed's problem that he did not give notice to the Warrick County Government of his change of address; we can't protect him from that.

Nanette Beckinger approached the podium. She stated she lives right next to this property and they did not receive certified mail. She stated they just bought that in May of 2012 and Monte Beckinger is her husband.

Mrs. Rector asked if it was Monte Noel Beckinger at 9844 Willow Pond Road.

Nanette said yes. She said the only thing they got was the letter from the Commissioners about the meeting.

Mrs. Rector stated it was mailed to 9844 Willow Pond Road on February 20th. She stated she should have been left a card in the mailbox.

Nanette stated unless her daughter took she does not have it.

Attorney Doll said it is normally a tangerine colored card.

Nanette stated her daughter has been getting the mail so she will have to ask her.

Attorney Doll asked how old her daughter was.

Nanette said 18.

Mrs. Rector stated it has been filed by the post office.

Attorney Doll said they tried to deliver it to her. He said he is betting that it is at the post office for her signature and shortly will be returned to the applicant as undelivered, but he is glad she is here. He asked if she had any other questions.

Nanette stated the reason they bought the house is because it was private. She said the field floods a lot because it comes up into their yard which is about 50 feet from the drainage ditch.

Attorney Doll stated before it is approved it will have to go to the Drainage Board for their approval so that would be the appropriate time to address this issue.

Nanette asked when that meeting would be.

Mrs. Rector stated the Drainage Board will meet on March 24, 2014 at 2:30 and then at 4:00 they will meet for street construction plans. She added that she should have gotten a letter from our office telling her about the change of meetings.

Nanette said yes we did get that.

Mrs. Rector said that paper has all of the correct meeting times and dates on it.

Attorney Doll said the decision to act or not to act is completely up to the Board. He said his advice is that it needs adequate notice. He added but if the Board wishes to act then he is at their service but if they get challenged at a later date it could be overturned.

Amanda Mosiman stated in the interest that it has not gone through street or drainage, and it has water for the property but not the development she made a motion to move the plat to the next meeting held on April 14, 2014.

Jeff Valiant seconded the motion and it was unanimously carried.

Mrs. Rector asked if Mr. Bivins needed to notice anybody else besides Mr. Faheed.

Attorney Doll stated Mr. Faheed is the only person he needs to notice to give him the 21 day notice, everybody else already has their notice and it will clearly be more than 21 days' notice.

Mr. Bivins asked if he needed to send him another notice to the same address.

Attorney Doll said yes. He said they tell them to use the Auditors mailing addresses, even though we know he does not live there it is what the government thinks is his address. He said maybe he has a change of address on file, he did not know. He said his advice is to mail another notice to the Auditors address on file.

Mrs. Rector stated he won't have 21 days' notice for the Drainage Board and Street plans.

Attorney Doll said he doesn't think they should worry about that. He said that is the Drainage Boards decision to make. He said we care about here and we say 21 days. He added that if they had been given the 21 day notice we would be doing business.

ATTORNEY BUSINESS:

Attorney Doll stated he has been doing complaints and contempt citations, nothing new.

EXECUTIVE DIRECTOR BUSINESS:

Unsafe Building Discussion:

Mrs. Rector stated she is still going to the grant meetings. She said she went to a meeting with the Commissioners two weeks ago and they are still discussing applying for that grant.

Monthly report:

Mrs. Rector stated the monthly report is in their folders. She said it is short and sweet this month but that is all she had time for. Mrs. Rector stated this month of March they have taken in more money in the first week than we usually do in the first couple months. She added we have had three subdivisions filed so it seems to be picking up.

Attorney Doll asked if she thought it was the weather.

Mrs. Rector said yes, she thinks so. She added that people are out of lots. She said next month the 150 lot subdivision beside Waterstone on Anderson road will be coming to them.

The President called for a recess for an Executive Session.

The meeting was reconvened; the President asked if there was any other business, seeing none he called for a motion to adjourn the meeting.

Brad Overton called for a motion to adjourn the meeting. The motion was seconded by Jeff Willis and unanimously carried.

Being no other business the meeting adjourned at 6:33 p.m.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director